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Message Text

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ORIGIN EA-14

INFO OCT-01 ISO-00 PM-07 NSC-07 SP-03 SS-20 RSC-01 L-03

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DRAFTED BY EA/PHL:ASWIFT:NAVY:JAG:MAJ. GEHRING
APPROVED BY EA/PHL:DCCUTHELL
L/EA:CROH (DRAFT)
L/PM:JMICHEL (DRAFT)
EA/RA:RFINCH (DRAFT)
PM:DPASSAGE (DRAFT)
ISA/FMRA:PEBARRINGER (DRAFT)
OSD:ISA/EA&P:CAPT SHAID (SUBSTANCE)
SAFGC:MR. ALLEN (DRAFT)
OGC(IA:MR. ALMOND (DRAFT)
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P R 102216Z MAY 74
FM SECSTATE WASHDC
TO AMEMBASSY MANILA PRIORITY
INFO SECDEF
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C O N F I D E N T I A L STATE 097714

E.0. 11652: GDS
TAGS: MARR, RP
SUBJECT: REVIEW OF STATUS NON-AGREED ARTICLES - ARTICLE XIII

REFS: A. MANILA 3129, MARCH 19, 1973
B. MANILA 10210, NOVEMBER 3, 1971

CINCPAC ALSO FOR POLAD

1. DEPARTMENT AND DOD CONCUR WITH REF A ASSESSMENT OF OUT-STANDING ISSUES WHEN LAST ROUND TERMINATED, WITH FOLLOWING CONFIDENTIAL

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COMMENTS:

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2. REGARDING PARA 5, REF A, WE CONCUR THAT DECLARATION OF MARTIAL LAW REQUIRES PROTECTION IN MBA FOR USG PERSONNEL AGAINST TRIAL BY GOP COURTS MARTIAL OR SPECIAL TRIBUNALS. ALTHOUGH THIS HAS THUS FAR NOT BEEN A PROBLEM, WE SEE A DEFINITE NEED FOR FORMAL PROTECTION FOR THE FUTURE, AND WE BELIEVE THAT CONGRESS WOULD BE ESPECIALLY SENSITIVE TO THE POSSIBILITY OF AMERICAN SOLDIERS BEING TRIED BY PHILIPPINE COURTS MARTIAL. AT THE SAME TIME WE RECOGNIZE THAT INTRODUCTION OF ANY BLUNT MARTIAL LAW PROVISIONS (SUCH AS IN THE KOREAN SOFA) AT THIS TIME MIGHT BE POLITICALLY UNACCEPTABLE TO THE GOP. WE BELIEVE THAT THE FOLLOWING PROVISION, WHICH WOULD BE ADDED TO THE CURRENT PROCEDURAL SAFEGUARDS PROVISION OF PARA 11 OF ARTICLE XIII, WOULD ADEQUATELY PROTECT USG INTERESTS WITH MINIMUM AFFRONT TO MARCOS AND THE GOP.

3. IN PARA 11, SUBSECTION "(A)", DELETE SEMI-COLON AFTER "TRIAL" AND ADD THE FOLLOWING: "BEFORE A REGULARLY CONSTITUTED CIVILIAN COURT;".

4. FYI: WE WOULD HOPE THAT IN NEGOTIATIONS IT WOULD BE CLEAR TO THE GOP THAT THE DECLARATION OF TOTAL MARTIAL LAW INCLUDING THE SUSPENSION OF THE NORMAL CIVILIAN JUDICIAL SYSTEM WOULD MEAN UNDER THIS PROPOSED PROVISION THAT THE GOP WOULD BE OBLIGED TO WAIVE ALL JURISDICTION OVER AMERICAN PERSONNEL UNDER PARA 5 OF ARTICLE XIII. END FYI.

5. AT APPROPRIATE TIME AFTER RESUMPTION OF TECHNICAL PANEL TALKS, FOLLOWING CHANGES SHOULD BE PROPOSED IN CLEAN TEXT OF ARTICLE XIII PREPARED BY EMBASSY AND COMMENTED UPON IN REF B:

A. PARA 3 LINE 2: DELETE "THE" BEFORE "JURISDICTION" AND INSERT "WHERE THAT RIGHT IS" AFTER "JURISDICTION."

B. PARA 4 LINE 2: DELETE "THE" BEFORE "JURISDICTION" AND INSERT "WHERE THAT RIGHT IS" AFTER "JURISDICTION."

C. PARA 5 LINES 4 AND 13: INSERT "RIGHT TO EXERCISE"
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BEFORE "JURISDICTION" IN LINE 4 AND INSERT "THE RIGHT TO EXERCISE" BEFORE "JURISDICTION" IN LINE 13.

D. PARA 6 LINES 3 AND 11: INSERT "RIGHT TO EXERCISE" BEFORE "JURISDICTION" IN LINE 3 AND INSERT "THE RIGHT TO EXERCISE" BEFORE "JURISDICTION" IN LINE 11.

6. PARAGRAPHS AFFECTED BY CHANGES IN PARA 4 WILL THEN

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READ AS FOLLOWS: QUOTE 3. WHENEVER FOR SPECIAL REASONS THE UNITED STATES MAY DESIRE NOT TO EXERCISE JURISDICTION WHERE THAT RIGHT IS GRANTED TO IT IN SUBPARAPHS 1.B AND 1.C OF THIS ARTICLE, THE APPROPRIATE UNITED STATES MILITARY AUTHORITIES SHALL SO NOTIFY THE FISCAL OF THE CITY OR PROVINCE IN WHICH THE OFFENSE WAS COMMITTED,AND IN SUCH A CASE THE PHILIPP NES MAY EXERCISE JURISDICTION. 4. WHENEVER FOR SPECIAL REASONS THE PHILIPPINES MAY DESIRE NOT TO EXERCISE JURISDICTION WHERE THAT RIGHT IS RESERVED TO IT IN PARAGRAPH 2 OF THIS ARTICLE, THE FISCAL OF THE CITY OR PROVINCE WHERE THE OFFENSE WAS COMMITTED SHALL SO NOTIFY THE APPROPRIATE UNITED STATES MILITARY AUTHORITIES, AND IN SUCH A CASE THE UNITED STATES MAY EXERCISE JURISDICTION. 5. THE UNITED STATES MILITARY AUTHORITIES MAY SUBMIT A WRITTEN REQUEST TO THE FISCAL OF THE CITY OR PROVINCE IN WHICH THE OFFENSE WAS COMMITTED FOR A WAIVER BY THE PHILIPPINES OF THE RIGHT TO EXERCISE JURISDICTION RESERVED TO IT IN PARAGRAPH 2 OF THIS ARTICLE. THE APPROPRIATE PHILIPPINE AUTHORITIES SHALL NOTIFY THE UNITED STATES MILITARY AUTHORITIES IN WRITING OF THEIR DECISION WITHIN 30 DAYS OF THE RECEIPT OF THE REQUEST FOR WAIVER BY THE FISCAL. IF SUCH NOTIFICATION IS NOT GIVEN WITHIN THE INDICATED PERIOD, THE REQUEST WILL BE CONSIDERED AS GRANTED AND THE UNITED STATES MAY EXERCISE JURISDICTION AS IN THE CASE OF A TRANSFER OF THE RIGHT TO EXERCISE JURISDICTION UNDER PARAGRAPH 4 ABOVE. 6. THE PHILIPPINES MAY SUBMIT A WRITTEN REQUEST TO THE UNITED STATES BASE COMMANDER FOR A WAIVER BY THE UNITED STATES OF THE RIGHT TO EXERCISE JURISDICTION GRANTED TO IT IN SUBPARAGRAPHS 1.B AND 1.C OF THIS ARTICLE. THE UNITED STATES MILITARY AUTHORITIES SHALL NOTIFY THE PHILIPPINE AUTHORITIES IN WRITING OF THEIR DECISION WITHIN 30 DAYS OF THEIR RECEIPT OF THE REQUEST FOR WAIVER. IF SUCH NOTIFICATION IS NOT GIVEN WITHIN THE CONFIDENTIAL

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INDICATED PERIOD, THE REQUEST WILL BE CONSIDERED AS GRANTED AND THE PHILIPPINES MAY EXERCISE JURISDICTION AS IN THE CASE OF A TRANSFER OF THE RIGHT TO EXERCISE JURISDICTION UNDER PARAGRAPH 3. END QUOTE.

7. CHANGES DESCRIBED IN PARAS 5 AND 6 ABOVE SHOULD BE PRESENTED AS EDITORIAL CHANGES DURING PROCESS OF FINAL CLEANING UP OF TEXT. EMBASSY SHOULD PRESENT CHANGES IN LOW KEY, AND AVOID IMPRESSION THAT USG IS REOPENING SUBSTANTIVE ISSUES. IF PRESSED FOR REASON, EMBASSY SHOULD EXPLAIN PURPOSE OF CHANGES IS TO MAKE IT CLEAR THAT PARAGRAPHS 3 - 6 OF ARTICLE XIII STATE THE RULES FOR DETERMINING WHICH GOVERNMENT HAS "THE RIGHT TO EXERCISE" JURISDICTION IN A PARTICULAR CASE, AND TO AVOID POSSIBILITY OF INTERPRETATION THAT JURISDICTION OF THE U.S. MILITARY

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Draft Date: 10 MAY 1974
Decaption Date: 01 JAN 1960
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Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GarlanWA
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
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To: MANILA
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